

Application No. 10/604,297  
Technology Center 3731  
Amendment dated January 16, 2008  
Reply to Office Action dated August 16, 2007

### REMARKS

As of the filing of the present Office Action, claims 1, 2, 4-13, and 15-20 were pending in the above-identified US Patent Application. In the Office Action, the Examiner rejected claims 1, 2, 5-13, and 16-20 under 35 USC §102 as being anticipated by U.S. Patent No. 4,807,626 to McGirr, rejected claims 4 and 15 as unpatentable over McGirr in view of either U.S. Patent No. 4,611,594 to Grayhack et al. (Grayhack) or U.S. Patent No. 5,484,384 to Fearnot, or U.S. Patent No. 5,817,104 to Blitz et al. (Blitz), and rejected claims 1, 2, 4-13, and 15-20 as being unpatentable over Blitz in view of McGirr or U.S. Patent No. 6,183,482 to Bates et al. (Bates).

In the present response, independent claims 1 and 11 have been amended to incorporate the limitations of the respective dependent claims 2 and 12 (canceled without prejudice).

Dependent claims 4 and 15 have been canceled without prejudice to Applicant in order to reduce and simplify the issues remaining in the examination of Applicant's application.

Applicant believes that the above amendments do not present new matter. Favorable reconsideration and allowance of claims 1, 5-13, and 16-20 are respectfully requested in view of the above amendments and the following

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remarks.

**Rejection under 35 USC §102**

McGirr discloses a device that functions exactly opposite that of Applicant's device. McGirr uses a control line 21 that extends through the proximal end of the basket and is attached to the distal end (column 3, line 21) to provide means of opening the basket. McGirr further discloses that an object of the invention is a basket that is self-closing (column 1, line 41) and further discusses the use of the flexible control line 21 for opening the basket (column 1, lines 54-60 and 62-64).

In contrast, Applicant's claimed device does not use or require a control line to open the basket, but rather an actuating means that is attached to the proximal end of the basket and does not pass through the proximal end to the distal tip of the basket as disclosed by McGirr. Applicant's actuating means closes the basket by drawing it into a sheath. When released, Applicant's basket will emerge from the sheath and automatically open, which is completely contrary to McGirr's teaching that the basket is self-closing. The absence of a control wire is a distinct advantage in that there is no central control wire that can push a stone out of the basket when pulled to expand the

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tip.

In addition, McGirr discloses legs 17 that are relatively thin and generally rectangular in cross-section (column 3, line 6), and further states that the legs (strips) 17 are fabricated of a flexible material which tends to return to its original shape when deflected therefrom. As a result, the legs 17 are normally straight and the basket tends to return to the closed position (column 2, lines 56-60). From this, it appears that the self-closing behavior of McGirr's device has nothing to do with the curved cross-sectional shape of the legs 17 and that such shape was merely co-incidental to creating the legs 17 by slitting a tube. In contrast, the legs of Applicant's device have cross-sections for the purpose of giving them the strength and rigidity to hold themselves in the open position (without a control wire) until retracted into a sheath.

Applicant respectfully disagrees that McGirr's device could be used in any of the procedures of claim 10, as McGirr's device is basically a catheter with flexible legs which would only be suitable for applications where short lengths could be used, e.g., used percutaneously as disclosed by McGirr.

In view of the above, Applicant respectfully requests withdrawal of the §102 rejection based on McGirr.

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**Rejection under 35 USC §103**

Blitz discloses a handle that uses a conventional helical basket with the exception that a control wire is necessary to properly open the basket. While the central portion of the legs do bow outwardly, actual and complete opening is accomplished by a control wire (column 4 lines 37-43 and 46-54) which passes through the proximal end of the basket and is connected to the distal tip. The handle of the invention has means to pull on the central control wire fully opening the basket. In all cases Blitz discloses a basket wire (leg) that is round in cross-section.

In contrast, Applicant claims a device with legs whose cross-sectional shape provides rigidity such that the legs automatically open outwardly with no assistance from a central control wire attached to the distal tip. Again, this is a distinct advantage in that there is no central control wire which can push the stone out of the basket when pulled to expand the tip.

As noted above, McGirr also teaches a basket that must be opened with a control wire. Bates teaches wires with a crescent shape (Figure 8E) that differs from the cross-section claimed by Applicant by having a sharp edge for the purpose of improving the baskets holding ability, whereas Applicant's claimed cross-section is not crescent-shaped and does not have

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any sharp edges, and instead enhances the rigidity and ability of the legs to open the basket without the use of a central control wire. Therefore, Applicant respectfully believes that it would not be obvious to modify the shape of Blitz's legs on the basis of Bates to have concave and convex inner and outer surfaces because the purpose of Bates's concave-convex shaped legs is completely different.

Finally, Applicant respectfully disagrees that Bates discloses that any shape providing proper basket opening and limiting trauma to tissue or the sheath lumen would have been obvious. First because it would not be obvious to one skilled in the art concerned with the ability of a basket to self-open without the need for a central control wire. Secondly, such a statement encompasses nearly every stone extracting device ever produced.

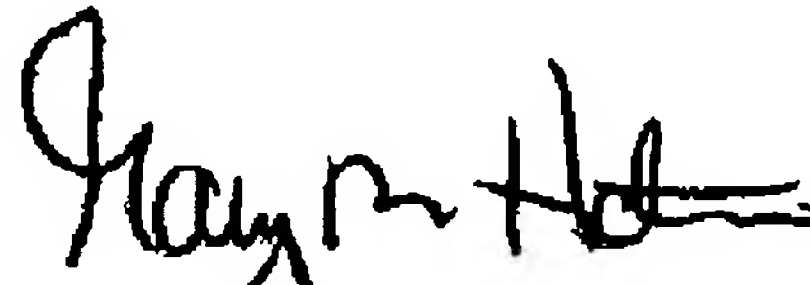
For the above reasons, Applicant respectfully requests withdrawal of the §103 rejection based on the combination of Blitz and McGirr or Bates.

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**Closing**

For the above reasons, Applicant respectfully requests that his patent application be given favorable reconsideration. Should the Examiner have any questions with respect to any matter now of record, Applicant's representative may be reached at (219) 462-4999.

Respectfully submitted,



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Attachment: Petition for Extension of Time